

***Remarks***

Reconsideration of this Application is respectfully requested.

Upon entry of the foregoing amendment, claims 1, 9, 27, 31, 40, 53, 67, 68, 69, 70, and 71 are amended. Claims 23, 39, 51, 58, 65 and 66 have been cancelled. These amendments are believed to introduce no new matter, and their entry is respectfully requested.

In the Office Action dated November 16, 2007, claims 67 and 68 stand rejected under 35 U.S.C. § 101 as being allegedly directed to a non-statutory subject matter. Claims 1-3, 5-7, 13-29, 35-43, 48-55, 61-64 and 66-73 stand rejected under 35 U.S.C. § 102(e) as being allegedly anticipated by Duesterwald et al., U.S. Patent Publication No. 2003/0101330. Claims 8, 30 and 56 stand rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Duesterwald. Claim 4 stands rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Duesterwald in view of Scott et al., U.S. Patent No. 6,615,329. Claims 9-12, 31-34, 44-47, 57, 59 and 60 are objected to as being allegedly dependent upon a rejected based claim, but will be allowable if rewritten in independent form.

Based on the above amendment and the following remarks, Applicants respectfully request that the Examiner reconsider all outstanding objections and rejections and that they be withdrawn.

***Interview at the USPTO***

Applicants' representative thanks the Examiner for the courtesies extended during the in person interview at the USPTO on February 6, 2008. The independent claims have been

amended, as discussed during the interview. As further explained below, Applicants believe that all of the claims are now in condition for allowance.

***Allowable Claims 9-12, 31-34, 44-47 57, 59 and 60***

Applicants thank the Examiner for indicating the allowability of claims 9-12, 31-34, 44-47 57, 59 and 60. Claims 9 and 31 have been rewritten in independent form. These claims, and their dependent claims, are therefore believed to be allowable, as indicated in the Office Action.

***Rejections under 35 U.S.C. § 101***

Claims 53, 67 and 68 have been amended, as discussed during the interview, to address the § 101 rejections. Applicants respectfully request that the rejections under 35 U.S.C. § 101 be withdrawn.

***Rejections under 35 U.S.C. § 102 and 103***

All of the independent claims stand rejected under 35 U.S.C. § 102(e) as being allegedly anticipated by Duesterwald. Although Applicants respectfully disagree with the Examiner's reasoning regarding these claims, Applicants have amended the claims to recite the aspects of **atomic writes**, which were originally claimed in claim 23. This aspect has been added to all of the independent claims, with the recitation of what is meant by atomic writes. Applicants also note that the term is well understood in the art, with the definition as stated in the amended claims. Duesterwald, as discussed during the interview, does not disclose this aspect – replacing

the instructions with instructions of the same length is insufficient to make this into the claimed atomic writes.

Additionally, as discussed during the interview, the independent claims have been amended to recite that, **based on counting the mark instructions, the location of the instruction pointer where execution within patched code should begin can be determined.** This aspect is absent from Duesterwald – Duesterwald, as discussed at length during the interview, only counts the number of times that a certain block of instructions have been executed – Duesterwald cannot determine where, in the patched code, the execution should begin, based on his frequency counts.

Thus, for all of the above reasons, Applicants respectfully submit that all of the claims are clearly distinguishable over Duesterwald, or any combination of Duesterwald with the other cited reference, Scott et al. Reconsideration and allowance of all the claims is therefore respectfully requested.

Reconsideration and allowance of this application is respectfully requested.

### ***Conclusion***

All of the stated grounds of objection and rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding objections and rejections and that they be withdrawn. Applicants believe that a full and complete reply has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for

any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

Prompt and favorable consideration of this Amendment and Reply is respectfully requested.

Respectfully submitted,

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